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IN THE

**Supreme Court of the United States**

October Term, 1961

No. 44

NATIONAL ASSOCIATION FOR THE ADVANCE-  
MENT OF COLORED PEOPLE, ETC.,  
*Petitioner,*

v.

FREDERICK T. GRAY, Attorney General of  
Virginia, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS  
OF THE COMMONWEALTH OF VIRGINIA

**REPLY BRIEF FOR PETITIONER**

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OF COLORED PEOPLE, Etc.,

*Petitioner,*

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FREDERICK T. GRAY, Attorney General of Virginia, et al.

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ON WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS  
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**REPLY BRIEF FOR PETITIONER**

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On page 16 of respondents' brief, it is alleged that "Furthermore, the 1956 amendment [to Section 54-74 of the Code of Virginia, 1950] does nothing more than codify the law as it existed prior to 1956." This contention was not presented to the court below, is not a part of the record on appeal and is demonstrably fallacious. Moreover, the last minute position respondents take in this regard is contradicted in the opinion below, which states that the purpose of the new law was "to *strengthen* the existing statutes to *further* control the evils of solicitation for the benefit of attorneys by a person who is not a party to the proceeding and in which he has no pecuniary right or liability" (emphasis added). See Petition for Writ of Certiorari, page 14a.

It is true that Section 54-74, prior to its amendment in 1956, forbade "improper solicitation of any legal or pro-

**Order to Show Cause**

Complaint of the Fourth District Committee of the Virginia State Bar, verified by affidavit, having been made to this Court and filed in the Clerk's Office on December 10, 1959, that S. W. Tucker, a licensed attorney at law practicing in this County has been guilty of unprofessional conduct, it is ordered that a rule now issue against S. W. Tucker to appear in the Court Room of this Court, in the Town of Emporia in the County of Greenville at 10 o'clock A. M. on December 29, 1959 and show cause, if any he can, before a court of three judges to be constituted as the law prescribes why his license to practice law should not be revoked or suspended.

It is further ordered that an attested copy of this order accompanied by the certificate of the Judge be forthwith forwarded to the Honorable John William Eggleston, Chief Justice of the Supreme Court of Appeals of Virginia.

It is further ordered that an attested copy of this order be served by the Sheriff of the County of Greenville forthwith upon S. W. Tucker.

Enter this:

/s/ CARLTON E. HOLLADAY,  
Judge.

December 21, 1959.

## Bill of Particulars

Comes now the Fourth District Committee of the Virginia State Bar by the Commonwealth Attorney of Greenville County, Virginia and for its bill of particulars respectfully represents:

1. That the case is based on the report and complaint filed in the above styled action and upon the matters therein stated.

2. That the case is further based on the rule of the said Court issued December 21, 1959 against S. W. Tucker.

3. That the Fourth District Committee of the Virginia State Bar will rely on all matters set forth in the said report and rule.

4. That in addition the charge of disbarment, suspension, or other disciplinary action is based on the following:

On or about the 3rd day of January, 1950, you did appear before the Circuit Court of Greenville County, Virginia, and undertake the defense of one Jodie Bailey, who stood indicted for the murder of one Luther P. Brockwell, when you had not been employed or retained for such purpose by the said Jodie Bailey or any person connected with or a party to the said case and when you did not receive or expect to receive compensation for your services from said Jodie Bailey or any person connected with or a party to the said case.

5. That in addition the charge of disbarment, suspension or other disciplinary action is based on the following:

On or about the 1st day of November, 1950, you did appear before the Circuit Court of Isle of Wight County, Virginia and assist in the prosecution of one Whitley, who stood indicted for the rape of one Mary Collins, when your assistance had not been requested by the Common-

*Bill of Particulars*

12. That the conduct of S. W. Tucker constituted a violation of the following "Cannons of Personal Ethics", to-wit: Cannon 6, Cannon 27, Cannon 28, Cannon 29, Cannon 38, and Cannon 42.

13. That the conduct of S. W. Tucker in connection with the aforesaid cases constituted a violation of professional ethics against maintenance and barratry which is both a violation of the Common Law, and the unwritten rules of professional conduct as recognized in the "Cannons of Personal Ethics."

FOURTH DISTRICT COMMITTEE OF THE VIRGINIA  
STATE BAR

by .....  
Harold L. Townsend

discrimination in school facilities. It is natural that the public should expect the N.A.A.C.P. to provide assistance in such cases, since one of its main goals is to secure the rights of Negroes to fair and just treatment and vindication of declared constitutional rights in the courts.

As it was not clear what offense was being charged, a motion treated as a motion to strike the bill of particulars was made and granted, and the state was given time to file an amended bill of particulars (Appendix A, *infra*, at p. 8a). The amended bill charged respondent with stirring up strife and litigation, and volunteering advice (Appendix A, *infra*, at p. 9a). Clearly, these charges were giving *ex post facto* effect to Sections 54-74, 54-78 and 54-79 as they were amended by the General Assembly of Virginia in 1956.

In November 14, 1960, after the respondent had been under the shadow of these proceedings for nearly a year, the court held that the bill of particulars had improperly added new matter (Appendix A, *infra*, at p. 13a). The Commonwealth's Attorney requested a non-suit without prejudice, and this request was granted over the objections of respondent, who wished to bring the case to a final conclusion (Appendix A, *infra*; at p. 15a).

During the pendency of these proceedings, the Virginia Supreme Court of Appeals interpreted the instant statute. *N.A.A.C.P. v. Harrison*, 202 Va. 142, 116 S. E. 2d 55, decided September 2, 1960. On July 1, 1961, the Fourth District Committee of the Virginia State Bar caused a new Rule to Show Cause to issue against the respondent attorney. The present disbarment proceedings, now pending in the Circuit Court of Greensville County, are based on Tucker's participation in the three cases involved in the first disbarment proceedings, and involvement in a number of school desegregation cases and other litigation. The explicit charge of misconduct in these cases is that Tucker participated in them at the N.A.A.C.P.'s request. Thus, while in the first proceedings Sections 54-74, 54-78 and



54-79, as amended, were covertly given *ex post facto* effect, the instant complaint is explicit in that regard (Appendix B, *infra*, at p. 16a).

Clearly, the statutory provisions in question here give impetus to a continuing effort to prevent respondent and other attorneys from contributing their services to help Negroes in civil rights litigation. It has been of no avail in the courts of Virginia for respondent to assert that his participation in the cases in which misconduct is alleged was an example of outstanding public service rather than unethical conduct, and that he accepted the cases in question at the request of the party in interest or the family. Under this present statute the giving of such aid subjects him to harassment and potential disbarment, and he can be charged with unethical conduct simply because the N.A.A.C.P. underwrote the counsel fees, expenses and court costs required.

The *Tucker* case serves to illustrate only one of many fact patterns under which an attorney who could not be convicted under the pre-existing statute can be penalized under the 1956 amendments. Indeed, litigation involving property or economic rights would not have been so carefully excepted if the legislature had not been aware that the instant statute had a significant new reach.

Moreover, it is submitted that the legislation in question, pursuant to which severe restrictions are placed on litigation involving human rights, would never have been enacted but for a fear that N.A.A.C.P.-sponsored cases would further erode the state policy of enforced racial discrimination.

Respectfully submitted,

ROBERT L. CARTER,  
20 West 40th Street,  
New York 18, New York,  
*Attorney for Petitioner.*

MARIA L. MARCUS;  
FRANK D. REEVES,  
*of Counsel.*



## APPENDIX A

Disbarment proceedings against S. W. Tucker, an attorney at law. *First Proceedings* (initiated on August 4, 1959, and non-suited without prejudice on motion of the state on November 14, 1960).

### CIRCUIT COURT OF GREENSVILLE COUNTY

#### Report and Complaint

To the Honorable J. J. Temple, Judge of the said Court:

The undersigned, the 4th District Committee of the Virginia State Bar, created under the provisions of Rule 13 of the Rules for the Integration of the Virginia State Bar, adopted and promulgated by the Supreme Court of Appeals of Virginia on Oct. 21, 1938, respectfully reports:

1. That on the 4th day of August, 1959, it received a complaint of unprofessional conduct on the part of S. W. Tucker, a licensed Attorney at Law, practicing in the County of Greenville, Virginia;

2. That after making a preliminary investigation of the said complaint, it found that the same justified further investigation, and the committee thereupon caused the said complaint to be reduced to writing, a copy of which is hereto attached and filed herewith as Exhibit "A", and fixed upon October 21, 1959, at 10:00 a. m., as the time, and the Greenville County Court House, Emporia, Virginia, as the place, for a hearing to be thereon.

3. That the said S. W. Tucker was served with a copy of the written complaint and was given notice of the time and place of the said hearing more than ten days prior thereto as required by the said Rule;

4. That the said S. W. Tucker appeared in person, with Counsel at said time and place, however, the Court reporter

*Report and Complaint*

did not appear and by consent the hearing was continued to October 26, 1959, at the same time and place, said Tucker again appeared in person, was represented by Counsel, and waived the reading of the Complaint. Evidence, consisting of the testimony of witnesses, and of said Tucker, all of whom were cross-examined, as well as argument of Counsel for Mr. Tucker, was heard.

5. That the transcript of the said proceedings before the Fourth District Committee is hereto attached and filed herewith as Exhibit "B".

6. That at the conclusion of the said hearing, the Committee decided that a charge of disbarment, suspension, or other disciplinary action against the said S. W. Tucker is merited for the following reasons:

1. On or about the 3rd day of January, 1950, you did appear before the Circuit Court of Greensville County, Virginia, and undertake the defense of one Jodie Bailey, who stood indicted for the murder of one Luther P. Rockwell, when you had not been employed or retained for such purpose by the said Jodie Bailey or any person connected with or a party to the said case and when you did not receive or expect to receive compensation for your services from said Jodie Bailey or any person connected with or a party to the said case.

2. On or about the 1st day of November, 1950, you did appear before the Circuit Court of Isle of Wight County, Virginia, and assist in the prosecution of one Whitley, who stood indicted for the rape of one Mary Collins, when your assistance had not been requested by the Commonwealth's Attorney or any person connected with the said case and when you did not receive or expect to receive compensa-

*Report and Complaint*

tion for your services from any person connected with or a party to the said case.

3. On or about the 30th day of September, 1952, you did appear before the Circuit Court of Charlotte County, Virginia, and undertake the defense of one Tabb Watts, who stood charged with a criminal offense, when you had not been employed or retained for such purpose by the said Tabb Watts or any person connected with or a party to the said case, the said Tabb Watts having previously employed other counsel, and when you did not receive or expect to receive compensation for your services from said Tabb Watts or any person connected with or a party to the said case.

The above being the paragraphs numbered 1., 2. and 3. of the said written complaint (Exhibit A), the part of the said written complaint numbered as paragraphs 4. and 5. were withdrawn and dismissed by the Committee.

The Committee directed that a report of its proceedings with a verified complaint be filed in the Clerk's Office of your Honor's Court for further proceedings to be had thereon in accordance with the statutes in such cases made and provided, and that a copy thereof be filed with the Secretary of the Virginia State Bar, all as required by the said Rule.

The Chairman of the Committee was authorized to sign the complaint on behalf of the Fourth District Committee.

Respectfully submitted,

Fourth District Committee of  
the Virginia State Bar

By

Chairman

*Bill of Particulars*

walth's Attorney or any person connected with the said case and when you did not receive or expect to receive compensation for your services from any person connected with or a party to the said case.

6. That in addition the charge of disbarment, suspension or other disciplinary action is based on the following:

On or about the 30th day of September, 1952, you did appear before the Circuit Court of Charlotte County, Virginia, and undertake the defense of one Tabb Watts, who stood charged with a criminal offense, when you had not been employed or retained for such purpose by the said Tabb Watts or any person connected with or a party to the said case, the said Tabb Watts having previously employed other counsel, and when you did not receive or expect to receive compensation for your services from said Tabb Watts or any person connected with or a party to the said case.

7. That the conduct of S. W. Tucker in connection with the aforesaid cases is a violation of professional ethics and constituted unprofessional conduct as set forth in the "Rules for Integration of the Virginia State Bar", as adopted by the Supreme Court of Appeals of Virginia.

8. That the conduct of S. W. Tucker in connection with the said cases constituted solicitation.

9. That the conduct of S. W. Tucker in connection with the said cases constituted the representation of adverse and conflicting interests.

10. That the conduct of S. W. Tucker in connection with the said cases constituted advertising.

11. That the conduct of S. W. Tucker was a violation of Canon 35 of the Canons of Personal Ethics.

**Order**

(February 12, 1960)

This day came the respondent in person and by counsel and also came the Commonwealth's Attorney, and the respondent having heretofore filed a Motion to Dismiss the Rule to Show Cause for Want of Particularities in the Complaint and the Commonwealth's Attorney having filed a motion to quash the said motion of respondent, and the same were argued by counsel.

And it appearing to the Court that respondent's said motion is technically incorrect and that the proper motion is a Motion to Strike the Bill of Particulars, and the Court treating respondent's motion to dismiss as a Motion to Strike the Bill of Particulars heretofore filed.

It is, therefore, ORDERED that the Motion to Strike is granted and that the Commonwealth's Attorney shall file within twenty-one (21) days from this date an amended Bill of Particulars. It is further ORDERED that within twenty-one (21) days therefrom respondent shall file such responsive pleadings as he may be advised.

To this action of the Court, the Commonwealth's Attorney excepts.

/s/ J. G. JEFFERSON, JR., Judge

/s/ JERRY E. BRAY, JR., Judge

/s/ CARLTON E. HOLLADAY, Judge

### **Amended Bill of Particulars**

Comes now the Fourth District Committee of the Virginia State Bar by the Commonwealth Attorney of Greenville County, Virginia, pursuant to Court order in the above action, and for an amended bill of particulars respectfully represents:

1. That in addition to the matters herein set forth the complaint is based on the "Report and Complaint" filed in the above styled action by the Fourth District Committee of the Virginia State Bar, and upon the matters therein stated.

2. That in addition to the matters herein set forth the complaint is further based on the rule of the said Court issued December 21, 1959 against S. W. Tucker in the above styled action and upon the matters therein stated.

3. That in addition to the matters herein set forth the complaint is based on all matters set forth in the bill of particulars hereto filed in the above styled action.

4. That S. W. Tucker, an attorney, has conducted himself so as to violate the provisions of 54-74 of the 1950 Code of Virginia prohibiting "any malpractice, or any unlawful or dishonest or unworthy or corrupt or unprofessional conduct".

5. That S. W. Tucker on or about the 3rd day of January, 1950, did appear before the Circuit Court of Greenville County, Virginia, and undertake the defense of one Jodie Bailey, who stood indicted for the murder of one Luther J. Brockwell, when he had not been employed or retained for such purpose by the said Jodie Bailey or any person connected with or a party to the said case and when



*Amended Bill of Particulars*

he did not receive or expect to receive compensation for his services from said Jodie Bailey or any person connected with or a party to the said case. That S. W. Tucker was employed in the above by reason of improper solicitation in violation of Cannon 27 of the Cannons of Personal Ethics.

6. That by personal communication and interviews not warranted by personal relations S. W. Tucker was employed in said case thus violating Cannon 27 of the Cannons of Personal Ethics.

7. That S. W. Tucker in volunteering advice and services in said case on behalf of Jodie Bailey engaged in advertisement of his services as an attorney contrary to Cannon 27 and Cannon 28 of the Cannons of Personal Ethics.

8. That S. W. Tucker was paid \$44. by Jodie Bailey and that S. W. Tucker accepted other compensation, commissions or other advantages from others including the NAACP without the knowledge and consent of his client after full disclosure in violation of Cannon 38 of the Cannons of Personal Ethics.

9. That S. W. Tucker in appearing in said case in Greenville County was controlled by a lay agency, to-wit, the NAACP, and that the provisions of Cannon 35 were thereby violated.

10. That S. W. Tucker on or about the 1st day of November, 1950, did appear before the Circuit Court of Isle of Wight County, Virginia, and assist in the prosecution of one Whitley, who stood indicted for the rape on one Mary Collins, when his assistance had not been requested



*Amended Bill of Particulars*

by the Commonwealth's Attorney or any person connected with the said case and when he did not receive or expect to receive compensation for his services from any person connected with or a party to the said case.

11. That S. W. Tucker in volunteering advice and services in said case on behalf of Mary Collins engaged in advertisement of his services as an attorney contrary to Cannon 27 and Cannon 28 of the Canons of Personal Ethics.

12. That S. W. Tucker in appearing in said case in Isle of Wight County was controlled by a lay agency, to-wit, the NAACP, and that the provisions of Cannon 35 were thereby violated.

13. That S. W. Tucker in appearing in the Mary Collins case violated Cannon 27 because of improper solicitation.

14. That by personal communication and interviews not warranted by personal relations S. W. Tucker appeared as Counsel in the Mary Collins case in violation of Canon 27.

15. That S. W. Tucker on or about the 30th day of September, 1952, did appear before the Circuit Court of Charlotte County, Virginia, and undertake the defense of the Tabb Watts, who stood charged with a criminal offense, when he had not been employed or retained for such purpose by the said Tabb Watts or any person connected with or a party to the said case, the said Tabb Watts having previously employed other counsel, and when he did not receive or expect to receive compensation for his services from said Tabb Watts or any person connected with or a party to the said case.

*Amended Bill of Particulars*

16. That S. W. Tucker was employed in the above by reason of improper solicitation in violation of Cannon 27 of the Cannons of Personal Ethics.

17. That by personal communication and interviews not warranted by personal relations S. W. Tucker was employed in said case thus violating Cannon 27 of the Cannons of Personal Ethics.

18. That S. W. Tucker in volunteering advice and services in said case on behalf of Tabb Watts engaged in advertisement of his services as an attorney contrary to Cannon 27 and Cannon 28 of the Cannons of Personal Ethics.

19. That S. W. Tucker in appearing in said case in Charlotte County was controlled by a lay agency, to-wit: the NAACP, and that the provisions of Cannon 35 were thereby violated.

20. That the details on said charges are substantially set forth in the Transcript dated October 26, 1959 before the Fourth District Committee of the Virginia State Bar, filed in this cause.

21. That S. W. Tucker has by his own personal admission at the request of the NAACP or a branch thereof represented numerous persons involved in litigation, to-wit: "Hanover County" Case, "the Martinsville Seven Case", "the Charlottesville School Case", "Commonwealth vs. Bailey", 2 cases "in Mecklenburg County", "Charlotte County" Case, "Lancaster County" Case, "Isle of Wight" Case, in violation of Cannon 35.

22. That the representation by S. W. Tucker in the said cases involved the volunteering of advice and the stirring up of strife and litigation in violation of Cannon 28.

*Order to Strike Portions of the Amended  
Bill of Particulars*

23. That the representation by S. W. Tucker in the said cases and the acceptance of proceeds from the NAACP without full knowledge and consent of his clients was a violation of Cannon 38.

FOURTH DISTRICT COMMITTEE OF THE  
VIRGINIA STATE BAR

by .....  
HAROLD L. TOWNSEND

**Order to Strike Portions of the Amended  
Bill of Particulars**

(November 14, 1960)

This matter came on this day to be heard on the complaint of the FOURTH DISTRICT COMMITTEE OF THE VIRGINIA STATE BAR, against S. W. Tucker, an Attorney at Law practicing before the bar of this court; upon the rule to show cause issued on the 21st day of December, 1959; upon the amended bill of particulars filed herein on March 2nd, 1960; upon the answer of S. W. Tucker to the rule to show cause; and upon his motion embodied in said answer to dismiss the bill of particulars.

Upon consideration whereof it appearing that this proceeding was instituted pursuant to and under the provisions of Rule 13 for the Integration of the Bar of Virginia; that the Fourth District Committee of the Virginia State Bar after having received a complaint of unprofessional conduct on the part of S. W. Tucker, a member of the Virginia State Bar, made a preliminary investigation from which it was found by said committee that the complaint justified further investigation; that thereupon said committee caused the complaint to be reduced to writing, and a hearing had thereon, after notice to the said S. W. Tucker, who appeared in person and by counsel; that a decision having

*Order to Strike Portions of the Amended  
Bill of Particulars*

been made by such committee that a charge of disbarment, suspension or other disciplinary action was merited the said committee filed its report and a verified complaint in the Clerk's Office of this court in accordance with the provisions of the aforesaid Rule 13: whereupon these proceedings are now being had pursuant to and in accordance with the provisions of Section 54-74 of the Code of Virginia, the court is of opinion that the amended bill of particulars introduces new matter and enlarges upon the charges contained in the verified complaint in several particulars, and these proceedings having been instituted by the Fourth District Committee of the Virginia State Bar pursuant to said Rule 13, as aforesaid, the court is of the further opinion that the verified complaint cannot be enlarged upon by a bill of particulars and that new matter cannot thereby be introduced in these proceedings, and the court doth so decide and determine.

It is accordingly adjudged and ordered that paragraphs 3, 8, 9, 12, 19, 21, 22 and 23 of the amended bill of particulars be and they are hereby stricken without prejudice.

To which action of the Court, the said Bar Committee by counsel excepted.

Enter this:

/s/ J. G. JEFFERSON, JR., Judge

/s/ JERRY E. BRAY, JR., Judge

/s/ CARLTON E. HOLLADAY, Judge

**Order to Non-Suit the Proceedings**

(November 14, 1960)

This matter came on this day to be heard on the motions of S. W. Tucker, an attorney at law, to strike the amended bill of particulars heretofore filed on March 2, 1960, and for leave to amended instanter the answer of the said S. W. Tucker by striking specified portions thereof.

Upon consideration and the Court being fully advised in the premises,

It is accordingly ADJUDGED and ORDERED that:

1. Respondent's motion to strike the amended bill of particulars be and it is hereby DENIED, to which action of the Court respondent excepts.

2. Respondent's motion to amend his answer be and it is hereby allowed to the extent specified in said motion.

Thereupon, the Commonwealth's Attorney moved for a continuance based on the ruling of the Court in striking a portion of the bill of particulars which motion for a continuance was DENIED, to which action of the Court the Commonwealth's Attorney excepted.

Thereupon the Commonwealth's Attorney moved that the proceedings be non suited without prejudice, whereupon it is ORDERED and DECREED that the proceedings be non suited without prejudice, to which action of the Court the respondent, by counsel, excepted.

J. G. JEFFERSON, JR.  
*Judge*

JERRY E. BRAY, JR.  
*Judge*

CARLTON E. HOLLADAY  
*Judge*

**APPENDIX B**

Disbarment proceedings against S. W. Tucker. *Second Proceedings* (initiated on July 1, 1961).

**CIRCUIT COURT OF GREENSVILLE COUNTY****Report and Complaint**

To the Honorable Judge of said Court:

The undersigned, the 4th District Committee of the Virginia State Bar, created under the provisions of Rule 13 of the Rules for the Integration of the Virginia State Bar, adopted and promulgated by the Supreme Court of Appeals of Virginia on October 21, 1938, respectfully reports:

1. That on the 14th day of November, 1960, it received a complaint of unprofessional conduct on the part of S. W. Tucker, a licensed Attorney at Law, practicing in the County of Greenville, Virginia;

2. That after making a preliminary investigation of the said complaint, it found that the same justified further investigation, and the committee thereupon caused the said complaint to be reduced to writing, a copy of which is hereto attached and filed herewith as Exhibit "A", and fixed upon April 5, 1961, at 10:00 A. M., as the time, and the Greenville County Court House, Emporia, Virginia, as the place, for a hearing to be thereon.

3. That the said S. W. Tucker was served with a copy of the written complaint and was given notice of the time and place of the said hearing more than ten days prior thereto as required by the said Rule;

4. That the said S. W. Tucker, by Counsel, moved for a continuance of the time of said hearing from April 5, 1961 until April 25, 1961 at 2:00 P. M., to which continuance the 4th District Committee consented.



*Report and Complaint*

5. That on the 25th day of April, 1961 the said S. W. Tucker appeared in person, and by Counsel, and waived the reading of the complaint. Evidence, consisting of the testimony of witnesses, and of said Tucker, all of whom were cross-examined, as well as argument of Counsel for Mr. Tucker, was heard.

6. That the transcript of the said proceedings before the Fourth District Committee is hereto attached and filed herewith as Exhibit "B".

7. That at the conclusion of said hearing, the Committee decided that a charge of disbarment, suspension, or other disciplinary action against the said S. W. Tucker is merited for the following reasons:

1. That S. W. Tucker on the 17th day of May, 1960, qualified as administrator of the estate of Fannie Perkins at the instance of certain heirs of the deceased husband of Fannie Perkins, it being represented that there were no direct heirs of Fannie Perkins. Thereafter one John Phillips, claiming to be a direct heir of Fannie Perkins, deceased, retained H. Benjamin Vincent to represent him for the purpose of having the administration of S. W. Tucker revoked. H. B. Vincent filed certain pleadings and motions in behalf of John Phillips and copies were received by S. W. Tucker. In other words, S. W. Tucker had notice that H. B. Vincent was counsel of record for John Phillips in the matter concerning the estate of Fannie Perkins, deceased, and more particularly that H. B. Vincent represented John Phillips in the matter of the removal of S. W. Tucker as administrator of the estate.

Despite this, S. W. Tucker permitted John Phillips to be brought to his office by John Knox, who had an interest as a creditor of the estate and who is a regular client of S. W. Tucker's and S. W. Tucker discussed with John



*Report and Complaint*

Phillips the various matters concerning the estate which were in issue. Moreover, S. W. Tucker obtained from John Phillips a sworn statement which stated, among other things, that John Phillips had no objection to S. W. Tucker's continuation in office as administrator.

S. W. Tucker stated that he made no effort to contact H. B. Vincent prior to talking to John Phillips, that he did not caution John Phillips that he should contact H. B. Vincent prior to discussing the matter with S. W. Tucker, that he made no effort to have H. B. Vincent present at the conference and that he was well aware that H. B. Vincent was counsel for John Phillips.

That the conduct aforesaid constituted a violation of Canon 9 in that S. W. Tucker communicated and negotiated with a party represented by Counsel.

That the conduct aforesaid constituted a violation of Canon 6 in the representation and attempt to represent conflicting and adverse interests.

That the conduct aforesaid constituted a violation of Canon 27 in that it was direct advertising and solicitation.

2. That S. W. Tucker has over a period of time violated the Canons of Ethics as follows:

(a) That S. W. Tucker on or about the 3rd day of January, 1950, did appear before the Circuit Court of Greensville County, Virginia, and undertake the defense of one Jodie Bailey, who stood indicted for the murder of one Luther P. Brockwell, when he had not been employed or retained for such purpose by the said Jodie Bailey or any person connected with or a party to the said case and when he did not receive or expect to receive compensation for his services from said Jodie Bailey or any person connected with or a party to the said case. That S. W. Tucker was employed in the above by reason of improper solicitation in violation of Canon 27 of the Canons of Personal or Professional Ethics.

*Report and Complaint*

(b) That S. W. Tucker on or about the 1st day of November, 1950, did appear before the Circuit Court of Isle of Wight County, Virginia, and assist in the prosecution of one Whitley, who stood indicted for the rape of Mary Collins, when his assistance had not been requested by the Commonwealth's Attorney or any person connected with the said case and when he did not receive or expect to receive compensation for his services from any person connected with or a party to the said case.

(c) That S. W. Tucker on or about the 30th day of September, 1952, did appear before the Circuit Court of Charlotte County, Virginia, and undertake the defense of one Tabb Watts, who stood charged with a criminal offense, when he had not been employed or retained for such purpose by the said Tabb Watts or any person connected with or a party to the said case, the said Tabb Watts having previously employed other Counsel, and when he did not receive or expect to receive compensation for his services from said Tabb Watts or any person connected with or a party to the said case.

(d) That S. W. Tucker in appearing in said cases in Greensville County, in Isle of Wight County, and Charlotte County, was controlled by a lay agency, to-wit, the NAACP, a branch thereof, or by a related organization, and that the provisions of Canon 35 and Canon 47 were thereby violated.

(e) That S. W. Tucker in appearing in aforesaid cases in Paragraphs (a), (b) and (c) violated Canon 27 because of improper solicitation.

(f) That S. W. Tucker in volunteering advice and services in said case on behalf of Jodie Bailey, Mary Collins and Tabb Watts cases engaged in advertisement of his services as an attorney contrary to Canon 27 and Canon 28 of the Canons of Personal or Professional Ethics.

*Report and Complaint*

(g) That by personal communications and interviews not warranted by personal relations S. W. Tucker appeared as Counsel in the said cases cited in paragraphs (a), (b) and (c) in violation of Canon 27 of the Canons of Personal or Professional Ethics.

(h) That S. W. Tucker was paid \$44. by Jodie Bailey and that S. W. Tucker accepted other compensation, commissions or other advantages from others including the NAACP without the knowledge and consent of his client after full disclosure in violation of Canon 38 of the Canons of Personal or Professional Ethics.

3. (a) That S. W. Tucker has by his own personal admission at the request of the NAACP or a branch thereof represented numerous persons involved in litigation, to-wit: "Hanover County Case", "the Martinsville Seven Case", "the Charlottesville School Case", 2 cases "in Mecklenburg County", Lancaster County Case", in addition to the "Cases" previously cited in Item 2, in violation of Canon 35.

(b) That S. W. Tucker has been associated as Counsel in the "Arlington County School Board Case", the "Richmond City School Board Case", "Prince Edward County School Board Case", and the "Warren County School Board Case", at the request of the NAACP or a branch thereof or a related organization, or a representative, agent, officer, or employee thereof.

(c) That the representation by S. W. Tucker in the said cases involved the volunteering of advice and the stirring up of strife and litigation in violation of Canon 28.

(d) That the representation by S. W. Tucker in the said cases and the acceptance of proceeds from the NAACP or a branch or a related organization without full knowledge and consent of his clients was a violation of Canon 38.

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(e) That S. W. Tucker, an Attorney, accepted employment in the said cases at the request of the NAACP or a branch thereof or a related organization, which cases were solicited by the NAACP, in violation of Canon 35 and Canon 47 of Canons of Professional Ethics.

4. That in the cases of Commonwealth vs. Junius Cain, S. W. Tucker accepted employment to represent Junius Cain.

That in a related case of Commonwealth vs. Tom Garris, Boyce Wornom accepted employment to represent Tom Garris.

The warrants were sworn out by Jesse Phillips, age 21, and the cases tried in the Greenville County Court.

In the County Court, the Court ruled that it was immaterial and therefore not admissible in evidence as the name of a girl who was with Jesse Phillips as no evidence was offered relating to her.

On conviction in County Court, the cases were appealed.

Without notice to the Commonwealth Attorney of Greenville County, who had appeared as prosecutor in County Court, the prosecuting witness at the request of S. W. Tucker was issued a summons to appear before Boyce C. Wornom as Commissioner in Chancery for interrogatories at the request of S. W. Tucker as Attorney and before S. W. Tucker as Commissioner in Chancery to answer the interrogatories of Boyce C. Wornom at the request of Boyce C. Wornom, an attorney, at the offices of Boyce C. Wornom and the summons in each case were returnable at the same time and place alleging that the procedure was based on the 1950 Code of Va. Section 8-296, which procedure was contrary to powers granted in 8-252, without legal precedent and in violation of legal process.

The prosecuting witness having failed to appear on advice of the Commonwealth Attorney was served with a

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"show cause" order issued in Circuit Court of Greenville County at the request of S. W. Tucker as attorney.

That the conduct of S. W. Tucker in instituting legal proceedings without legal foundation or basis and in pursuing a procedure which would be "calculated to . . . affect his (the witness) free and untrammelled conduct when appearing at the trial or on the witness stand", was a violation of Canon 22 and Canon 39 and Canon 15.

That such was an abuse of legal process by an attorney in violation of Canon 39.

5. (a) That the conduct of S. W. Tucker in connection with the aforesaid case is a violation of professional ethics and constituted unprofessional conduct as set forth in the "Rules for Integration of the Virginia State Bar", as adopted by the Supreme Court of Appeals of Virginia.

(b) That the conduct of S. W. Tucker in connection with the said cases constituted solicitation.

(c) That the conduct of S. W. Tucker in connection with the said cases constituted the representation of adverse and conflicting interests.

(d) That the conduct of S. W. Tucker in connection with the said cases constituted advertising.

(e) That the conduct of S. W. Tucker as an attorney in the aforesaid cases was a violation of Canon 35 of the Canons of Personal or Professional Ethics.

(f) That the conduct of S. W. Tucker constituted a violation of the following "Canons of Personal or Professional Ethics", to-wit: Canon 6, Canon 9, Canon 15, Canon 25, Canon 27, Canon 28, Canon 38, Canon 39, Canon 42, and Canon 47.

(g) That the conduct of S. W. Tucker in connection with the aforesaid cases constituted a violation of profes-

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sional ethics against maintenance and barratry which is both a violation of the Common Law, and the unwritten rules of professional conduct as recognized in the "Canons of Personal or Professional Ethics".

The Committee directed that a report of its proceedings with a verified complaint be filed in the Clerk's Office of your Honor's Court for further proceedings to be had thereon in accordance with the statutes in such cases made and provided, and that a copy thereof be filed with the Secretary of the Virginia State Bar, all as required by said Rule.

The Chairman of the Committee was authorized to sign the complaint on behalf of the Fourth District Committee.

Respectfully submitted,

FOURTH DISTRICT COMMITTEE OF  
THE VIRGINIA STATE BAR

/s/ LIGON L. JONES

By: Ligon L. Jones  
Chairman



### **Rule to Show Cause**

Complaint of the Fourth District Committee of the Virginia State Bar, verified by affidavit, having been made to this Court and filed in the Clerk's Office on May 30th, 1961, that S. W. Tucker, a licensed attorney at law practicing in this County has been guilty of unprofessional conduct, it is ordered that a rule now issue against S. W. Tucker to appear in the Court Room of this Court, in the Town of Emporia in the County of Greenville at 10 o'clock A. M., on October 3rd, 1961, and show cause, if any he can, before a court of three judges to be constituted as the law prescribes, why his license to practice law should not be revoked or suspended.

It is further ordered that an attested copy of this order accompanied by the certificate of the Judge be forthwith forwarded to the Honorable John William Eggleston, Chief Justice of the Supreme Court of Appeals of Virginia.

It is further ordered that an attested copy of this order be served by the Sheriff of the County of Greenville forthwith upon S. W. Tucker.

Entered July 1st, 1961.

A Copy, Teste:

M. A. TAYLOR, JR.,  
Clerk.